

\*E-filed 11/2/07\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DIGITAL NETWORKS NORTH AMERICA,  
INC. a Delaware Corporation,

Case No. C06-07169 HRL

Plaintiff / Counter-defendant,

v.

**ORDER CONTINUING HEARING AND  
REQUIRING SUPPLEMENTATION OF  
RECORD**

NUMARK INDUSTRIES, LLC, a Rhode Island  
limited liability company,

Re: Docket Nos. 23, 25

Defendant / Counter-claimant.

Plaintiff, Digital Networks North America, Inc. ("DNNA"), and Defendant, Numark Industries ("Numark"), developed a digital music player under a joint development agreement. When the deal soured, both parties sought damages for alleged breach of the agreement. DNNA now moves to compel production of documents and for sanctions. Unfortunately, even after the conclusion of briefing on this matter, the court is unclear as to what remains at issue.

Numark indicates that it produced "responsive documents" or "some responsive documents" to certain requests. However, it is not clear whether *all* responsive documents have been produced, or if Numark has certified that this is the case. Furthermore, Plaintiff's reply brief notes that, "after this reply was written, Numark served what purported to be a written response<sup>1</sup> to DNNA's First Set of Requests for the Production of Documents." However, Plaintiff does not address if (or how) that response moots any of the motion.

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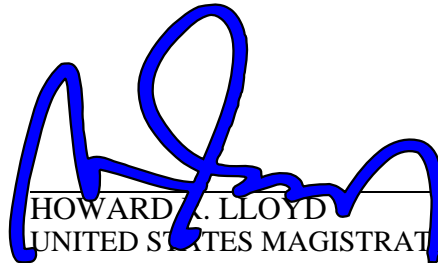
<sup>1</sup> Plaintiff did not include this document in its reply and Defendant has not sought leave to supplement the record with it.

1 Because such information is critical to the determination of the instant motion, each  
2 party is ordered to file - **by Tuesday, November 6, 2007** - a supplemental brief or declaration  
3 clarifying what aspects of the motion remain at issue and what has been produced at this time.  
4 The document referred to in the reply brief as the "purported" response to DNNA's request for  
5 production of documents might answer some of these questions. Accordingly, Plaintiff shall  
6 include that document with its supplemental brief.

7 In consideration of this delay, the hearing on the motion to compel (as well as the  
8 corresponding motion for sanctions) currently set for November 6, 2007 **is continued to**  
9 **November 13, 2007 at 10:00 a.m.**<sup>2</sup> The hearing shall take place in Courtroom 2, Fifth Floor of  
10 the United States District Court in San Jose.

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12 **IT IS SO ORDERED.**

13 Dated: 11/2/07

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16 HOWARD A. LLOYD  
17 UNITED STATES MAGISTRATE JUDGE  
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28 <sup>2</sup> The order granting defense counsel's request to appear telephonically is accordingly amended to permit such an appearance at the November 13 hearing.

THIS IS TO CERTIFY THAT A COPY OF THIS NOTICE WILL BE SENT TO:

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\* Counsel are responsible for providing copies of this order to co-counsel.

Dated: 11/2/07

/s/ KRO

Chambers of Magistrate Judge Howard R. Lloyd